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8 Attorneys for Defendants
 9 COUNTY OF CONTRA COSTA, JOSHUA PATZER, and
 10 WARREN RUPF

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14
 15 SHAWN DAY, individually and as
 16 successor in interest to the Estate of Steffen
 17 Matthew Day,

18 Plaintiff,

19 vs.

20 COUNTY OF CONTRA COSTA;
 21 JOSHUA PATZER; WARREN RUPF, and
 22 Does 1 through 50, et al.,

23 Defendants.

24 Case No. C07-4335 PJH

25 **NOTICE OF MOTION AND MOTION
 26 FOR SUMMARY JUDGMENT, OR IN
 27 THE ALTERNATIVE, SUMMARY
 28 ADJUDICATION ON BEHALF OF
 DEFENDANTS; MEMORANDUM OF
 POINTS AND AUTHORITIES;
 DECLARATION OF JAMES V.
 FITZGERALD, III, ESQ. WITH
 SUPPORTING EVIDENCE; PROPOSED
 ORDER**

29
 30 Date: September 10, 2008
 31 Time: 9:00 a.m.
 32 Judge: Hon. Phyllis J. Hamilton
 33 Dept: Courtroom 3, 17th Floor (SF)

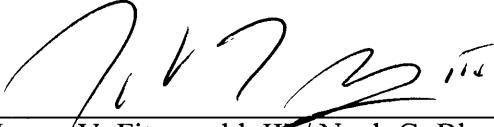
34
 35 NOTICE IS HEREBY GIVEN that on September 10, 2008, at 9:00 a.m. or as soon
 36 thereafter as this matter may be heard by the above-entitled U.S. District Court, Courtroom 3 (17th
 37 Floor), located at 450 Golden Gate Avenue, San Francisco, CA, Defendants COUNTY OF
 38 CONTRA COSTA, JOSHUA PATZER and WARREN RUPF ("Defendants"), will and hereby
 39 do move the Court for Summary Judgment and/or Summary Adjudication against Plaintiff on the
 40 grounds that there are no genuine issues as to any material facts and that the moving parties are
 41 entitled to judgment as a matter of law. More specifically, Defendant PATZER's actions in
 42 relation to the shooting incident of August 15, 2006, were objectively reasonable under the

1 circumstances per the Fourth Amendment and related state law negligence and other state law
2 claims. If a there is a triable issue as to whether or not there was any constitutional violation per
3 the Fourth Amendment, Defendant PATZER is entitled to qualified immunity for such
4 constitutional claim. Also, Defendants did not violate Plaintiff's Fourteenth Amendments rights
5 to a parental relationship with his minor son Decedent. Plaintiff has not set forth any evidence of
6 a *Monell* claim. Further, Plaintiff's state claims fail independently as well and/or are subject to
7 California immunities for peace officers. As such, Defendants are entitled to judgment as a
8 matter of law as to all claims, or in the alternative, summary adjudication.

9 This motion is based upon this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, the Declaration of James V. Fitzgerald, III, and attached
11 exhibits to such declaration, and any and all pleadings and papers on file in this action, oral
12 argument and upon such other matters as may be presented to the Court at the time of the hearing.

13
14 Dated: August 5, 2008

15 MCNAMARA, DODGE, NEY, BEATTY, SLATTERY,
16 PFALZER, BORGES & BROTHERS LLP

17 By: 

18 James V. Fitzgerald, III / Noah G. Blechman

19 Attorneys for Defendants

20 COUNTY OF CONTRA COSTA, JOSHUA PATZER,
21 and WARREN RUPF

1 PROOF OF SERVICE BY MAIL (C.C.P. §§ 1013a, 2015.5)

2 I hereby declare that I am a citizen of the United States, am over the age of eighteen years,
3 and not a party to the within action; my business address is 1211 Newell Avenue, Walnut Creek,
4 California 94596.5 On this date I served the foregoing **NOTICE OF MOTION AND MOTION FOR**
6 **SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION**
7 **ON BEHALF OF DEFENDANTS** on the parties in said action, by placing a true copy thereof
8 enclosed in a sealed envelope addressed as listed below for mailing. I am readily familiar with
9 this firm's practice of collection and processing correspondence for mailing. Under that practice,
10 it would be deposited with the United States Postal Service on that same day with postage thereon
11 fully prepaid, in the United States Post Office mail box at Walnut Creek, California, addressed as
12 follows:13 **Attorneys For Plaintiff:**14 Larry E. Cook, Esq.
15 Casper, Meadows, Schwartz & Cook
16 2121 N. California Blvd., Suite 1020
17 Walnut Creek, CA 9459618 Phone: 925-947-1147
19 Fax: 925-947-113120 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct and that this declaration was executed on August 5, 2008 at Walnut
22 Creek, California.23 
24 SABRINA AHIA25
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